

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DWAYNE STAATS,

Plaintiff,

v.

GOVERNOR OF DELAWARE

JOHN CARNEY, et al.,

Defendants.

Civil Action No. 21-169 Erie

MEMORANDUM ORDER

This *pro se* prisoner civil action was received by the Clerk of Court on June 28, 2021 and referred to United States Magistrate Judge Richard A. Lanzillo for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and the Local Rules for Magistrate Judges. ECF No. 1. Plaintiff, a former inmate at SCI-Albion, has brought claims under 42 U.S.C. §1983 against Delaware Governor John Carney, Pennsylvania Governor Tom Wolf, Delaware Department of Corrections (DOC) Commissioner Claire DeMattis, Pennsylvania DOC Secretary John Wetzel, and the SCI-Albion Superintendent Michael Clark. ECF No. 1. The complaint, still unfiled of record, asserts violations of Plaintiff's Fifth Amendment rights (Count One), the Eighth Amendment's proscription against cruel and unusual punishment (Count Two), the Equal Protection Clause of the Fourteenth Amendment (Count Three), Plaintiff's right to procedural due process (Count IV), and various Pennsylvania statutes (Count V). *Id.* At bottom, Plaintiff's claims are predicated on his transfer from a correctional institution in Delaware to SCI-Albion where, it is alleged, he was improperly and continually housed in solitary confinement, without any meaningful review or an opportunity to challenge his placement.

On August 30, 2021, Plaintiff filed a motion for leave to proceed with this litigation *in formal pauperis*. ECF No. 5. His Prisoner Trust Fund Account Statement was filed that same day, along with a form authorizing the withdrawal of prison account funds for the purpose of paying the filing fee. ECF Nos. 6, 7. On September 20, 2021, Plaintiff filed a second (and duplicative) motion for leave to proceed *in forma pauperis*. ECF No. 8.

On May 20, 2022, Judge Lanzillo filed a report and recommendation (“R&R”) opining that Plaintiff should be granted *in forma pauperis* status. *See* ECF No. 14. After screening the complaint in accordance with 28 U.S.C. §1915(e), Judge Lanzillo recommended that Count One, Count Three, Count Five, portions of Count Two, and all claims against Defendants John Carney, Tom Wolf, and Claire DeMattis be dismissed in accordance with 28 U.S.C. §1915(e) on the grounds that such claims were either legally frivolous or failed to state a cognizable basis for relief. *Id.* Objections to the R&R are due on or before June 6, 2022.

On May 24, 2022, Plaintiff submitted a document stating his desire “to have his Civil Complaint withdrawn from the Courts for the Western District of Pennsylvania.” ECF No. 15. On May 31, 2022, the Clerk of Court docketed this submission as a motion to withdraw the complaint. *Id.*

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, a plaintiff “may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” Fed. R. Civ. P. 41(a)(1)(A)(i). Unless the notice states otherwise, the dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B). “But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” *Id.*

In this case, the complaint has not yet been formally docketed (much less served), so the Defendants have not answered or responded in any manner to Plaintiff's allegations. Plaintiff's request to voluntarily withdraw his complaint is therefore timely under Rule 41(a)(1)(A)(i) and does not require an order of approval from this Court. The Court also notes that Plaintiff appears to qualify for *in forma pauperis* status, although his second application in that regard is redundant.

After *de novo* review of the putative complaint, the Report and Recommendation, Plaintiff's pending motions, and all other relevant filings in this case, the following Order is entered:

NOW, this 3rd day of June, 2022,

IT IS ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis*, filed at ECF No. [5], is GRANTED, and the Clerk is directed to file Plaintiff's complaint as a separate docket entry. Plaintiff's second motion for leave to proceed *in forma pauperis*, filed at ECF No. [8], is redundant and is therefore DISMISSED as moot.

IT IS FURTHER ORDERED that Plaintiff's motion to withdraw the complaint, ECF No. [15], is DISMISSED as moot, inasmuch as Plaintiff does not require leave of court to withdraw his pleading at this juncture.

In accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(i), IT IS FURTHER ORDERED that the Plaintiff's Complaint shall be, and hereby is, DISMISSED. The dismissal shall be WITHOUT PREJUDICE, as the Court is unaware of Plaintiff having filed any prior federal or state court action predicated upon the same claims as those asserted in this case. Because there is no need for the undersigned to conduct a formal screening of Plaintiff's

complaint under 28 U.S.C. §1915(e), the Court will decline to adopt that aspect of the Magistrate Judge's Report and Recommendation. *See* ECF No. [14] at 2-8.

Nevertheless, IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, dated May 20, 2022, ECF No. [14], shall be, and hereby is adopted as the opinion of this Court insofar as it relates to Plaintiff's initial motion for leave to proceed *in forma pauperis*.

There being no further pending matters before the Court, the Clerk is directed to mark this civil action "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

cm: Dwayne Staats
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(via U.S. Mail)

The Honorable Richard A. Lanzillo (via CM/ECF)